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ENFORCEMENT IN UKRAINE

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For every citizen is important opportunity to protect and restore their rights and freedoms. Thus, in accordance with Articles 6 and 13 conventions on human rights and fundamental freedoms, everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, the determination of his civil rights and obligations or of any which against him criminal charges. Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity [1].

Also, in accordance with Articles 55, 124 of the Constitution of Ukraine [2], every citizen is guaranteed the right to defense in court violated his rights. Judicial decisions adopted by the courts and name of Ukraine are binding on the entire territory of Ukraine.

However, the court does not always voluntarily executed by the parties are not in favor of which it is made. For this purpose and was established institute enforcement proceedings, which ensures the enforcement of court decisions and other bodies (officials).

The purpose of this article is the analysis of the institute enforcement proceedings in Ukraine, the general conditions and procedure for enforcement.

With the formation of separate and independent Ukraine for a long time there was no change in the law regarding enforcement. Also ignored legislator in this regard remained newly formed business entities, especially entities, meaning enforcement measures become outdated and did not meet the realities of life and changes in the social development of the state,

and especially in the new legislation from other areas of law. In particular, the Law of Ukraine «On property» has established the equality of all forms of ownership, which can not be said of the enforcement proceedings, which, like all other previously existing Soviet rules give priority to state ownership. In addition to Section V «Appeals court decision in the execution and restitution» of the Civil Procedural Code of Ukraine 1963 main legal act, which is quite detailed rules regulating enforcement, remained in force even Instruction former USSR «On Enforcement Proceedings» in 1985, which not withstand scrutiny.

Consequently, the enforcement authority, and even the courts, has dropped significantly as lenders sought to resolve issues that arise with regard to enforcement proceedings by reference to criminal organizations, where decisions are not always carried out just in time, but in full. In this case violated the Constitution promulgated in 1996 Ukraine guarantees of the rights and freedoms of man and citizen. But in a market economy, the government had to take measures that would improve this situation. So the next step in establishing and improving the enforcement proceedings was adopted by the Verkhovna Rada of Ukraine Law «On State Executive Service» dated 24 March 1998 and «On Enforcement Proceedings» dated April 21, 1999 year that settled the new procedure of execution performance of the new body – the State Executive Service (hereinafter – DVS), which is designed to carry out the enforcement of court decisions and other authorities in Ukraine. These laws also define the beginning of a substantial reform of the entire system of enforcement [3, 4].

Order № 74/5 Ministry of Justice of Ukraine 15.12.1999 the Instruction on conducting execution, which came into legal force on 1 January 2000, while noting that the effect of instructions of the former USSR «On Enforcement Proceedings» in 1985 on the territory of Ukraine is not covered, which was an important step in the development of law enforcement proceedings.

Should also be noted that Article 1 of the Law of Ukraine «On Enforcement Proceedings»

contains the definition of enforcement proceedings as the final stage of the proceedings and the enforcement of other bodies (officials) – a set of actions and officials specified in this Law, aimed at the enforcement of court decisions and other bodies (officials) that are made on the basis and within the limits and in the manner prescribed by this Law and other legal acts adopted in accordance with this Law and other laws and decisions pursuant to this Act shall be subject to enforcement.

However, the Law of Ukraine «On Enforcement Proceedings» (Article 3, «Implementation of decisions by other bodies») provided for the case of recovery of funds not only ICE authority, but tax authorities, banks and other financial institutions. Decisions of these bodies can be carried out in accordance with the law as other agencies, institutions, organizations, officials and citizens. The solution for the recovery of funds from the state and local budgets or budgetary institutions is carried out by the State Treasury of Ukraine established by the Cabinet of Ministers of Ukraine. The above-mentioned bodies, institutions, organizations and individuals are not enforcement agencies but agencies and officials who implement the decisions to prosecute or administrative proceedings.

Terms and procedures of enforcement proceedings in Ukraine are regulated by Chapter 3 of the Law of Ukraine «On Enforcement Proceedings».

According to Article 17 of the Law «On Enforcement Proceedings» enforcement of state executive service performed under such writs:

1) writs of execution issued by the courts, commercial courts and orders, including on the basis of decisions of the arbitral tribunal and the decisions of the International Commercial Arbitration Court at the Chamber of Commerce and the Maritime Arbitration Commission at the Chamber of Commerce;

2) decisions, decisions of courts in civil, commercial and administrative matters, criminal proceedings and cases of administrative violations in the cases provided for by law;

3) the order;

4) implementing a notary;

5) The license fees for labor disputes, issued in accordance with relevant decisions of such committees;

6) resolution of (officials) authorized to consider cases on administrative violations in the cases provided by law;

7) resolution of public enforcement of penalty enforcement of collection, the costs associated with the organization and conduct of executive action and a fine;

8) the decisions of other state authorities, if their implementation by law assigned to the State Executive Service;

9) the European Court of Human Rights with the specifications provided by the Law of Ukraine «On the implementation of the decisions and practices of the European Court of Human Rights».

In the enforcement document shall include:

a) the name and date of issuance of the document, name of the authority, name of the officer who issued it;

b) the date of adoption and number of the decision, according to which issued the document;

c) the full name (if applicable) or name (last name, your own name and middle name) (for individuals) claimant and debtor, their location (for legal entities) or place of residence or stay (for individuals) identification code of business entity claimant and the debtor (if applicable), identification number of the debtor and the claimant (for individuals – taxpayers) or passport number and series of collector and the debtor to individuals – citizens of Ukraine because of their religious or other opinion refused to accept the identification number of officially reported the appropriate government agencies and have a check mark in the passport of the citizen of Ukraine, as well as other information, if known court or other authority that issued the document that identifies the plaintiff and whether the debtor facilitate enforcement, including date of birth of the debtor and his job (for individuals), the location of the debtor's assets, accounts, etc plaintiff and the debtor;

d) the provisions of the decision;

e) the date of entry into (legal) power solutions;

f) the term of submission of the documents for execution.

Executive document must be signed by an authorized officer, stating its names and initials and sealed. Linking executive document official stamp is required if the body (official), which issued the document required by law to have a seal with the State Emblem of Ukraine [5].

The law may establish other additional requirements for writs.

Implementing measures are state enforcement at home; stay at work or at the location of the debtor's property. If the debtor is a legal entity, the execution is carried out at the location of its permanent body or property. The right to choose the place of performance among several state executive services that can perform executive action to implement the decision on territory covered by their function belongs to the plaintiff.

It should also be noted that the decision, which requires the debtor to perform certain actions by a public contractor at the place of such action.

State Executive must accept to perform executive document and enforcement proceedings (within three business days after receipt of order the enforcement proceedings), if not over a period of presentation of such documents for execution, it meets the requirements set forth the Law «On Enforcement proceedings» and brought to the execution to the relevant body of executive services.

State Executive refuses to initiate enforcement proceedings if:

1) crossing the said period, the production of documents for execution;

2) non- executive documents and statements failure of enforcement proceedings in cases stipulated by the Law «On Enforcement Proceedings»;

3) If the decision based on which a document issued by the executive, not entered into (legal) force, unless it is in accordance with the law allowed for the immediate implementation;

4) submission of the document to the state executive service not where or not the jurisdiction of the decision;

5) if the delay is not over the decision provided by the court that the decision was made;

6) non-compliance with an enforcement document with Article 18 Law «On Enforcement Proceedings»;

7) the official publication of the notice of bankruptcy and the liquidation procedure;

8) If the enforcement document is returned to the plaintiff in his statement, except writs for alimony and other periodic payments;

9) the availability of other statutory exceptions to exercise enforcement.

The refusal to initiate enforcement proceedings bailiff takes a decision within three working days, but for the decision to be executed immediately – not later than the next business day after receiving the writ of execution and the following day sends it to the applicant with an executive document.

In Article 22 of the Law «On Enforcement residence» deadlines submission of the documents to perform:

1) license fees on labor disputes , decisions of courts in cases of administrative offenses and the resolution bodies (officials) authorized to consider cases on administrative offenses – within three months;

2) other executive documents – within one year, unless otherwise provided by law.

These terms of submission of the documents to perform set for:

1) the execution of court decisions – on the day after the decision enters into force or the deadline set in the case of deferred or installment plan execution, and if the judgment subject to immediate execution – the day after its enactment;

2) enforcement of commission on labor disputes – the date of issuance of the enforcement of decisions;

3) other executive documents from the day after the entry into legal force, unless otherwise provided by law.

Note that the solution for the recovery of periodic payments (for alimony, for damages

caused by injury or other impairment of health, survivor, etc.) can be brought to perform throughout the period for which payments are awarded.

Terms of submission of the documents for execution interrupted in the following cases:

- 1) submission of the documents for execution;
- 2) partial fulfillment of the decision by the debtor;
- 3) providing the court which issued the document, deferred or installment execution.

After breaking the term of submission of the documents for execution flow of life renewed. Elapsed time to interrupt period, a new period will not be counted.

The decision of the enforcement proceedings bailiff indicates a need for the debtor to self-judgment in up to seven days after a ruling (if the decision on forced eviction of the debtor – in up to fifteen days) and notes that in case of failure by the debtor documentary evidence of the decision will be initiated to enforce this decision with recovery from the debtor enforcement fees and expenses related to the organization and conduct of executive actions envisaged Law «On Enforcement proceedings». According to the plaintiff's bailiff together with an order of enforcement proceedings may seize the property and assets of the debtor, which imposed an appropriate resolution.

Article 32 of the Law «On Enforcement Proceedings» provides the following measures of Enforcement:

- 1) foreclosure on assets and other assets (property rights) of the debtor, including when they are in others belong to the debtor or to other persons;
- 2) foreclosure of wages (income), income, pension, scholarship debtor;
- 3) removal of debtor and creditor transfer of certain items specified in the decision;
- 4) other measures envisaged solution.

Article 37 of the Law «On Enforcement Proceedings» indicates an exhaustive list of circumstances that cause the suspension of compulsory enforcement, and in Article 38 of this Law are cases when the bailiff has the right to

suspend the enforcement proceedings. Of these cases the bailiff makes a reasoned resolution to suspend enforcement, approved by the head or deputy head of the department, which is subordinate to the bailiff. Resolution to suspend the enforcement proceedings on the grounds provided for in Article 37 of this Law, the bailiff takes out no later than the working day, when he became aware of such circumstances. Copy of the order shall be sent to the parties within three days.

In Art.49 Law «On Enforcement Proceedings» listed cases where termination is subject to enforcement proceedings. On completion of the enforcement proceedings bailiff takes a decision on the basis of its motivation mandatory signs, approved by the head of department to which it is directly responsible. Copy of the order shall be sent within three days of parties and may be appealed within ten days in the manner prescribed by the said law. In the event that the enforcement proceedings (other than the direction of executive documents as belonging to another body of the state executive service, the official publication of the notice of bankruptcy and the liquidation procedure, the end of the enforcement proceedings by the judgment in order to secure a claim or take precautions, and in addition cases nestyahnennya collection or enforcement costs related to the organization and conduct of execution), the return to the writ of execution of a court or other authority (official) that issuing arrest of the debtor's property, withdrawn, canceled other state enforcement actions taken enforcement decisions are made and other actions necessary in connection with the completion of the enforcement proceedings. Completed writ proceedings can not be started again, except as provided by the Law «On Enforcement Proceedings».

It should be noted that the costs associated with organizing and carrying out execution bailiff charges the debtor. State performer takes a decision to recover from the debtor's expenses related to the organization and conduct of executive actions approved by the head of the relevant department of executive services. Said resolution shall be sent to the parties no later

than the next business day after its making, and can be challenged by them to the court within ten days.

Enforcement – a set of actions of officials and directed to enforce the decisions of the courts and other bodies (officials) that are made on the basis and within the limits and in the manner specified by the Law of Ukraine «On Enforcement Proceedings».

In independent Ukraine for a long time enforcement proceedings governing the provisions of the Civil Procedure Code of Ukraine 1963 and instructions of the former USSR «On Enforcement Proceedings» 1985.

Only in 1998, the Verkhovna Rada of Ukraine adopted the Law «On the State Enforcement Service» and the 1999 «On Enforcement Proceedings», which is regulated in detail a new procedure for execution the new body design – the state executive service which is designed to efficiently carry out the enforcement of court decisions and other authorities in Ukraine. These laws also define the beginning of a substantial reform of the entire system of enforcement. However, at present, Ukraine has a large number of court decisions. In this connection it is necessary to continuously improve the mechanisms of the State Executive Service in theoretical and practical terms.

In our opinion, the lack of the Law of Ukraine «On Enforcement Proceedings» is too abbreviated term submission of the document to perform – it is time «for the year», unlike the previous version of the law that established a period of three years.

Also note that in order to accelerate the execution proceedings the plaintiff by the Law of Ukraine «On Enforcement Proceedings» entitled to advance costs of organizing and carrying out execution. In turn, after the execution proceedings advance payment shall be returned to the plaintiff. However, the said law is not clarified terminology and the return of the deposit [6–9].

Enforcement begins with the receipt of an enforcement document to the state performer who within the Law of Ukraine «On Enforcement

Proceedings» shall decide on the opening of or refusal to initiate enforcement proceedings. In compliance enforcement document the requirements, imposed by the state enforcement ordinance of the enforcement proceedings in which the debtor is given a period for voluntary execution. In the event of default by the debtor claims resolution of enforcement proceedings and claims of executive documents bailiff begins enforcement of which is to foreclose on the property and funds of the debtor. It should be noted that the costs associated with organizing and carrying out execution bailiff charges the debtor. State performer takes a decision to recover from the debtor's expenses related to the organization and conduct of executive actions approved by the head of the relevant department of executive services.

REFERENCES

1. Конвенція про захист прав людини і основоположних свобод / ратифіковано : від 17.07.1997 р., № 475/97-ВР [Електронний ресурс]. – Режим доступу: http://zakon2.rada.gov.ua/laws/show/995_004.
2. Конституція України : від 28.06.1996 р., № 254к/96-ВР [Електронний ресурс]. – Режим доступу: <http://zakon2.rada.gov.ua/laws/show/254к/96-вр>.
3. Закон України «Про виконавче провадження» : від 21.04.1999 р., № 606–XIV [Електронний ресурс]. – Режим доступу: <http://zakon2.rada.gov.ua/laws/show/606-14>.
4. Закон України «Про державну виконавчу службу» : від 24.03.1998 р., № 202/98-ВР [Електронний ресурс]. – Режим доступу: <http://zakon2.rada.gov.ua/laws/show/202/98-вр>.
5. Фурса С. Я. Виконавче провадження в Україні : навчальний посібник / Фурса С. Я., Щербак С. В. – К. : Атіка, 2002. – 480 с.
6. Спільний наказ Міністерства юстиції України та Міністерства внутрішніх справ України «Про організацію роботи щодо інформаційної взаємодії Міністерства юстиції України, Міністерства внутрішніх справ України та Державної виконавчої

служби України» : від 08.10.2012 р., № 1480/5/868.

7. Наказ Державної виконавчої служби України «Про затвердження Інструкції з діловодства у Державній виконавчій службі України» : від 18.04.2012 р., № 19/2.

8. Наказ Міністерства юстиції України «Про затвердження Положення про управління державної виконавчої служби головних управлінь юстиції в Автономній

Республіці Крим, областях, містах Києві та Севастополі, Положення про районний, районний у місті, міський (міста обласного значення), міськрайонний, міжрайонний відділ державної виконавчої служби» : від 10.04.2012 р., № 549/5.

9. Наказ Міністерства юстиції України «Про затвердження Інструкції з організації примусового виконання рішень» : від 02.04.2012 р., № 512/5.

Sopilnyk R. L. Enforcement in Ukraine / R. L. Sopilnyk // Форум права. – 2013. – № 4. – С. 395–400 [Електронний ресурс]. – Режим доступу: http://nbuv.gov.ua/j-pdf/FP_index.htm_2013_4_68.pdf

The development of the institute enforcement proceedings in Ukraine, the general conditions and procedure for enforcement Examines.

Сопільник Р.Л. Виконавче провадження в Україні

Проаналізовано розвиток інституту виконавчого провадження в Україні, загальних умов та порядку здійснення виконавчого провадження.

Сопильник Р.Л. Исполнительное производство в Украине

Проанализировано развитие института исполнительного производства в Украине, общих условий и порядка осуществления исполнительного производства.